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7 DEFENDANT RASH CURTIS & ASSOCIATES

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 IGNACIO PEREZ, on Behalf of Themselves and
12 all Others Similarly Situated,

13 Plaintiffs,

14 v.

15 RASH CURTIS & ASSOCIATES,

16 Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' OBJECTIONS TO
DEFENDANT'S POWERPOINT SLIDES 10,
14, 15, 17, 18, AND 19**

DATE: May 6, 2019
TIME: 8:00 a.m.
DEPT: 1, 4th Floor

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18 Defendant responds to Plaintiffs' objections to Defendant's Power Point slides 10, 14, 15, 17, 18,
19 and 19 as follows:

20 **As to slide 10:** As to the video excerpts from Mr. Kizer's deposition, these were timely submitted
21 to the court jointly on March 4, 2019. Defendant did list videotaped deposition excerpts from Mr. Kizer's
22 April 13, 2017 deposition in rebuttal to Plaintiffs' audio-visual designation of his testimony. These were
23 exchanged timely pursuant to the parties' agreement on February 22, 2019 at 5:41 p.m. That said, Mr.
24 Kizer's deposition contains evidence (testimony) separate and apart from the audio-visual designations,
25 and the use of clips in, and in rebuttal to, Mr. Kizer's deposition. The testimony on slide 10 is such
26 evidence.

27 In any event, the fact that telephone numbers in phone fields 5 through 10 are obtained from a
28 "variety of sources" is undisputed and will be confirmed by Mr. Kizer on the stand and other witnesses.

1 Defendant would be willing to remove any reference to Mr. Kizer and, instead, simply have a slide
2 that says “phone numbers placed in phone fields 5 through 10 came from a variety of sources. . .”

3 As to slides 14, 15, 18, 18 and 19: Plaintiff objects to these slides on the basis they relate to
4 willfulness/good faith, which will be the subject of the treble damages phase of the trial.

5 The evidence is actually being given in order to provide the context of the facts here, and how and
6 why Rash Curtis was calling this number. Moreover, the jury is being told that Mr. Perez is the class
7 representative of the four certified classes. Again, as discussed at length at the April 29 conference,
8 whether the numbers were skip traced or not are the key issues of this trial. Class counsel are attempting
9 to take these other issues out of play – but do so, in defendant’s view, would be error and prejudicial to its
10 defense. Contrary to class counsel’s argument on skip tracing, there was no merit findings on skip tracing
11 in the Court Rule 23.

12 Indeed, the Court relied upon Mr. Snider and Mr. Kizer’s testimony that, *prima facie*, the numbers
13 were obtained by skip tracing. (ECF 81, class certification order, September 6, 2017, p. 5:25, and pp.
14 10:17-11:6.)

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16 Dated: May 3, 2019

ELLIS LAW GROUP LLP

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18 By /s/ Mark E. Ellis
19 Mark E. Ellis
20 Attorney for
21 DEFENDANT RASH CURTIS & ASSOCIATES
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